IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No.1770 of 2004
In
MISC.CIVIL APPLICATION-FOR REVIEW No.1356 of 2004
In
SPECIAL CIVIL APPLICATION No.17994 of 2003
With
MISC.CIVIL APPLICATION No.1522 of 2003

For Approval and Signature:

HONOURABLE THE ACTING CHIEF JUSTICE Y.R.MEENA Sd/-

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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THE CHILODA (D) GRAM PANCHAYAT - Appellant(s)
Versus
SHRI.K.H.KANOJIA OR HIS SUCCESSOR IN THE OFFICE & 5

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Appearance :
MS PREETI S PARMAR for Appellant(s) : 1,
MR SV PARMAR for Appellant(s) : 1,
MS SANGEETA VISHAN, AGP for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 1 - 6.
MR PINAKIN M RAVAL for Respondent(s) : 2,
MR JM BAROT for MR HS MUNSHAW for Respondent(s) : 3,
MR JAYANT P BHATT for Respondent(s) : 5,

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CORAM : HONOURABLE THE ACTING CHIEF JUSTICE Y.R.MEENA

and

HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 30/06/2006

CAV JUDGMENT

(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

LETTERS PATENT APPEAL NO.1770 OF 2004

1. This Letters Patent Appeal challenges order dated 23.07.2004 made by the learned Single Judge in Special Civil Application No.17994 of 2003 and order dated 23.08.2004 in Misc. Civil Application No.1356 of 2004 (review petition). The appellant herein is the original petitioner in Special Civil Application as well as Misc. Civil Application.

2. The petitioner had challenged order dated 11.08.2003 made by the State Government in exercise of revisional jurisdiction under Section 259 of the Gujarat Panchayats Act, 1993 (the Act). During pendency of the petition subsequent order dated 23.06.2004 made by the Appellate Committee of the District Panchayat also came to be challenged by amending the petition.

3. The petitioner-appellant is Gram Panchayat. By passing certain resolutions different persons encroaching lands bearing Survey Nos.474 and 475 were called upon to pay encroachment rent to the petitioner-Panchayat at the rate of Rs.3/- per sq. yard. One Shri Ranchhodbhai H. Patel, President, Chiloda Char Rasta Vepari Mandal, filed appeal before the Appellate Committee of the District Panchayat against the aforesaid resolutions. Thereafter, being aggrieved with orders made by the Appellate Committee, the same person viz. Shri Ranchhodbhai H. Patel, preferred revision application before the State Government. After hearing the parties the revisional authority made the following order:

> "..... During hearing no evidence is adduced to show that these lands vest in Village Panchayat. For this reason I K.H. Kanojia Joint Secretary (Inspection) Panchayat, Village Rural Housing and Village Development Sachivalaya Gandhinagar, on basis of submissions of parties and record make following order.
>
> O R D E R
>
> (1) The Revision Application of the Applicant dt. 10.08.2000 is rejected.
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> (2) The stay order issued under the even number on 22.02.2001 is hereby vacated. Further order made under even number on 18.12.2002 is hereby cancelled.

(3) The order No.Dist Panch/PCT/WS/4439-43-2002 dt. 31.07.2000 made by the Appeal Committee is partly confirmed and as respects order at Sr.No.(2), it shall be ascertained as to in whom vests the ownership of lands in question. This shall be decided after due scrutiny of record. And if ownership of such lands vest in Government, is the Village Panchayat. Competent to recover penalty ? This shall be verified. For this case is remanded to the District Panchayat Appeal Committee to take decision afresh."

4. The aforesaid order made by the revisional authority was challenged by petitioner-Gram Panchayat by way of a writ petition. The principal ground of challenge was that the petitioner-Gram Panchayat was empowered under Section 269 of the Act to recover the amounts and hence, there was no scope for adjudication about the competency of Gram Panchayat to recover the amounts. The learned Single Judge has rejected the petition only on the ground that the said order dated 11.08.2003 made by the revisional authority has lived its life, in as much as by the said order the matter had been remanded to the Appellate Committee of the District Panchayat and during pendency of the petition the Appellate Committee of the District Panchayat, after reconsidering the matter upon remand, has come to the conclusion that the petitioner-Panchayat had wrongly passed the resolutions and could not have collected any

amounts in pursuance of such resolutions. That as the appeal has been allowed, it is open to the petitioner-Panchayat to prefer a revision application as provided under Section 259 of the Act. Therefore, no case was made out to entertain the petition under Article 226 of the Constitution.

5. Mr.S.V.Parmar, learned advocate appearing on behalf of the petitioner-appellant, has assailed the impugned order of the learned Single Judge on the ground that the order dated 11.08.2003 of the revisional authority was *per incuriam* hence, in absence of any valid order the Appellate committee could not have passed any order on remand. According to him, once Section 269 of the Act permitted the Panchayat to collect amount by way of encroachment the revisional authority could not have issued any direction because the Panchayat was not collecting any amount by way of taxes. In support of the submissions he has placed reliance on the decisions of the Apex Court in the case of – (i) *A.R. Antulay Vs. R.S. Nayak & Anr.*, (1988) 2 SCC 602; and (ii) *Govt. of A.P. & Anr. Vs. B. Satyanarayana Rao (dead) by Lrs. & Ors.*, (2000) 4 SCC 262.

6. There is no dispute as to the legal position in relation to the meaning of the phrase '*per incuriam*' *in law. The only question is* whether the order dated 11.08.2003 made by the revisional authority could be termed to contain any observations which are not relevant for the purposes of deciding the controversy before the revisional authority. It is not even the case of the petitioner that the revisional authority could not have assumed jurisdiction against the order made by the Appellate Committee of the District Panchayat in the first round.

7. Section 269 of the Act reads as under:

> **" 269.Liability to pay rent for unauthorised occupation or possession of property of panchayat.**-(1) Whoever not being duly authorised in that behalf occupies or is in possession of any property vesting in, or under the control of, a panchayat shall without prejudice to any other action which may be taken under this Act, be liable to pay in to the panchayat a sum upto four times the amount of rent which would have been payable to the panchayat for the period of such occupation or possession, had the property been let by the panchayat."

8. On a plain reading it becomes apparent that a person who is not duly authorized, occupies or is in possession of any property vesting in, or under control of, a Panchayat shall be liable to pay to the Panchayat rent at the specified rate as if the occupation or possession was by way of letting out the property by the Panchayat. Therefore, the section in the first instance requires that a Panchayat can call upon a person to pay the rent as stipulated by the provision in relation to any property vesting in or under the control of such a Panchayat. In the present case, as the finding of the revisional authority goes to show, there was no evidence adduced on behalf of the Panchayat to establish that the lands in question vest in the petitioner-Panchayat. It is in context of the said finding that the final direction has been made, viz. to ascertain as to in whom the ownership of the lands in question vests, and this has to be done after due scrutiny of record. In the circumstances, reliance of provisions of Section 269 of the Act is misplaced. Even in the appeal the learned advocate for the petitioner-appellant has not been able to establish that the property vests in or is under the control of the petitioner-Panchayat. Therefore, on facts, it is not

possible to accept the submission that the order of the revisional authority is *per incuriam*.

9. In these circumstances, the learned Single Judge was fully justified in holding that on 23.07.2004, i.e. the date of impugned order, the order dated 11.08.2003 made by the revisional authority had exhausted itself because the Appellate Committee of the District Panchayat had already passed order dated 23.06.2004 on remand. Once the order of remand was correct in light of the facts and evidence on record, the subsequent order made by the Appellate Committee of the District Panchayat could not be termed to be bad in law. Hence, the learned Single Judge is also right in holding that the same is amenable to alternative remedy by way of revision under Section 259 of the Act, and the petition is not required to be entertained.

10. In light of what is stated hereinabove, both on facts and in law, the order of the learned Single Judge does not call for any interference and the appeal being devoid of merits is dismissed.

MISC. CIVIL APPLICATION NO.1522 OF 2003

In light of the aforesaid order made in the Letters Patent Appeal No.1770 of 2003, this Misc. Civil Application has become infructuous and is accordingly, rejected. Rule discharged.

Sd/-
[Y.R. MEENA, Actg. C.J.]

Sd/-
[D.A. MEHTA, J]

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Bhavesh*